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D One (1) photograph signed and dated by Sergeant [redacted]

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G One (1) photograph signed and dated by Deputy Huerta.

H One (1) photograph signed and dated by Deputy [redacted]

I One (1) photograph signed and dated by Deputy [redacted]

J Two (2) photographs signed and dated by Deputy [redacted]

K One (1) photograph signed and dated by Deputy Alatorre.

L Email dated February 8, 2016, from Los Angeles Police Department Lieutenant [redacted] to Los Angeles County Sheriff's Department Lieutenant [redacted].

MISCELLANEOUS DOCUMENTS

Shooting and Force Admonition forms.



LOS ANGELES COUNTY DISTRICT ATTORNEY'S OFFICE
BUREAU OF FRAUD AND CORRUPTION PROSECUTIONS
JUSTICE SYSTEM INTEGRITY DIVISION

JACKIE LACEY • District Attorney
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June 11, 2018

Captain Christopher Bergner
Los Angeles County Sheriff's Department
Homicide Bureau
1 Cupania Circle
Monterey Park, California 91755

Re: Officer Involved Shooting of Eduardo Rodriguez
J.S.I.D. File #16-0064
L.A.S.D. File #016-02215-0294-013

Dear Captain Bergner:

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the February 14, 2016, fatal shooting of Eduardo Rodriguez by Los Angeles County Sheriff's Department Deputies Andrew Alatorre and [redacted] Our detailed analysis of this incident is contained in the attached memorandum.

Very truly yours,

JACKIE LACEY
District Attorney

SHANNON PRESBY
Head Deputy District Attorney
Justice System Integrity Division

c: Deputy Andrew Alatorre, #[redacted]
Deputy [redacted] #[redacted]

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MEMORANDUM

TO: CAPTAIN CHRISTOPHER BERGNER
Los Angeles County Sheriff's Department
Homicide Bureau
1 Cupania Circle
Monterey Park, California 91755

FROM: JUSTICE SYSTEM INTEGRITY DIVISION
Los Angeles County District Attorney's Office

SUBJECT: Officer Involved Shooting of Eduardo Rodriguèz
J.S.I.D. File #16-0064
L.A.S.D. File #016-02215-0294-013

DATE: June 11, 2018

The Justice System Integrity Division of the Los Angeles County District Attorney's Office has completed its review of the February 14, 2016, fatal shooting of Eduardo Rodriguez by Los Angeles County Sheriff's Department (LASD) Deputies [redacted] and Andrew Alatorre. It is our conclusion that Deputies [redacted] and Alatorre acted in lawful self-defense and defense of others when they first fired their duty weapons at Rodriguez. We further find that there is insufficient evidence to prove beyond a reasonable doubt that Deputy Alatorre used unreasonable deadly force when he discharged his firearm at Rodriguez in a second volley of shots.

The District Attorney Command Center was notified of this shooting at 5:30 a.m. on February 14, 2016. The District Attorney Response Team responded to the location of the shooting where they received a briefing and walk-through of the scene.

The following analysis is based upon reports, photographs, recorded interviews and technical analysis provided by the LASD as well as depositions and expert reports created in anticipation of civil litigation which arose out of the shooting. The voluntary statements of Deputies [redacted] and Alatorre to LASD detectives were considered as part of this analysis.

FACTUAL ANALYSIS

During the early morning hours of February 14, 2016, LASD Detective [redacted] and Deputy [redacted] were working together as patrol partners. [redacted] who was normally assigned as an auto-theft investigator, spent part of the night discussing patterns of auto thefts which occur in East Los Angeles where they were patrolling. At about 3:40 a.m., [redacted] drove their patrol car into a parking lot to the north of the 4000 block of Whittier Boulevard because he knew that stolen cars were often found there. [redacted] and [redacted] both observed a blue Nissan van occupied by one person who was sitting in the driver's seat. As the deputies

continued through the parking lot, they saw a black Acura Integra which had its wheels removed and replaced by spare tires and appeared to be partially stripped of some of its parts. [redacted] believed that the Acura had been recently stolen, because he had driven through the parking lot earlier in his shift and the car had not been there. [redacted] drove the patrol car around the block and approached the parking lot via South Ferris Avenue when the blue van, now occupied by three people, pulled onto Ferris Avenue in front of them. Based on his observations of the van, the Acura he believed was stolen, and the fact that one of the lights on the van was not properly illuminated, [redacted] decided to make a traffic stop on the van. After [redacted] activated the spotlight on the patrol vehicle, the van, which had just crossed Whittier Boulevard, pulled to the right and came to a stop.



Figure 1- Overhead view showing relative location of stolen car and shooting

[redacted] approached the driver's side of the van and identified the driver as [redacted] Simultaneously, [redacted] approached the van on the passenger side and, after ordering the rear passenger, later identified as [redacted] to place his hands on the headrest of the seat in front of him, contacted the front seat passenger. The passenger in the front seat of the vehicle, ultimately identified as Eduardo Rodriguez, was uncooperative with [redacted] from the moment that she contacted him. Rodriguez was ordered to place his hands on the dashboard of the van, and he would momentarily comply before pulling his hands back. [redacted] told [redacted] to request additional LASD units and she made that request to their dispatcher at 3:46 a.m.

By 3:48 a.m., several additional LASD units had arrived at the traffic stop. Sergeant [redacted] was the first to arrive, followed quickly by Deputies Argelia Huerta and [redacted] in one vehicle and Deputies [redacted] and Andrew Alatorre in another. [redacted]

asked [redacted] to step out of the van and she complied and was directed to Huerta to be searched. [redacted] stayed to the rear of the van while [redacted] and Alatorre moved to the passenger side of the van to assist [redacted] with Rodriguez.

Once she had the assistance of other deputies, [redacted] opened the passenger door of the van and ordered Rodriguez to exit. [redacted] tried to keep control of Rodriguez by holding onto his left arm while simultaneously Alatorre was holding onto his right arm. As Rodriguez turned to exit the van, his sweatshirt moved and exposed his waist. [redacted] who was standing on the driver's side of the van, saw a handgun near Rodriguez's waistband and shouted, "417! 417!"[1] At the same time, Rodriguez started actively resisting the deputies' attempts to control him and a .22 caliber revolver, which had been tucked into a back brace positioned above Rodriguez's waistband, fell to the ground immediately next to the van.[2] [redacted] watched the gun fall to the ground, stepped on it, and said, "I'm stepping on the gun. I'm stepping on the gun." However, he did not think he said it loud enough, because "everyone was still yelling" after he announced that he controlled the weapon.[3] [redacted] also heard and saw the gun fall to the ground; in response, he said, "Gun! Gun! Gun!" Rodriguez was able to spin out of Alatorre's grasp and moved into the roadway with [redacted] trying to hold onto his arm and restrain him.



Figure 2 - Rodriguez's gun depicted where he dropped it

Rodriguez continued struggling to get away from the deputies as they moved south on Ferris Avenue. There were no punches thrown by anyone. Rodriguez, who was wearing multiple layers of baggy clothing, was twisting and pulling away from the deputies, who were left grabbing onto his clothing. The struggle moved about forty feet south from the van when

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[1] "417" is an LASD radio code for "Person with a gun."

[2] Rodriguez was wearing a back brace that is normally used to support lifting heavy loads. As noted *infra*, [redacted] testified in his deposition that Rodriguez used the brace to hold the handgun he was carrying.

[3] None of the other witnesses described hearing [redacted] say that he was stepping on a gun.

Alatorre, who had been grappling with Rodriguez, pushed Rodriguez back and created a distance of about five feet between them. Alatorre and [redacted] then opened fire. [redacted] fired four shots at Rodriguez and Alatorre fired between eight and ten rounds. Rodriguez fell to the ground face down.



Figure 3 - Rodriguez was forty feet south of the van when he was shot

Rodriguez fell with both of his hands under his body. Alatorre ordered him to show his hands. At 3:50 a.m., one of the deputies advised the dispatcher that there had been a deputy involved shooting. Alatorre then shot Rodriguez between five and seven more times as Rodriguez was on the ground. One of these gunshots was broadcast over the radio 13 seconds after the dispatcher was advised of the deputy involved shooting when one of the deputies at the scene pressed the transmit button on his radio.[4]

After the second volley of shots, the deputies retrieved a ballistic shield from [redacted] patrol vehicle, approached Rodriguez, and conducted a cursory search for weapons. No weapons were found during the cursory search or during the full search undertaken after he was pronounced dead.

[4] The recordings provided by LASD do not delineate who is using the radio, nor do they provide data to enable a precise time stamp.

Deputy Alatorre's Statement[5]

Alatorre started his shift on February 13, 2016 at 10:00 p.m. and was assigned to patrol with [redacted] They responded to a request for backup which was broadcast by [redacted] and arrived within 30 seconds of the request. Alatorre saw [redacted] standing next to the open front passenger door of the van and heard her telling Rodriguez to show her his hands. Alatorre moved to the side of the van and was standing directly to the right of [redacted] as Rodriguez was still sitting in the van. [redacted] pulled Rodriguez out of the van and he slipped out of her grip and raised his hands while [redacted] was still holding them. He heard [redacted] say "417" three times. Rodriguez spun away from [redacted] pushed her aside, and reached for his waistband:

Alatorre: He broke away completely; turned to face our direction; and he immediately reached for his waistband.

Ramirez:[6] And at that point, what did you do?

Alatorre: At that point in time, I wanted to take his hands away because I knew he had a gun based on what my partner observed and I wanted to be able to control his hands so he wouldn't be able to withdraw the firearm from his waistband or from wherever he had it on his person.

Ramirez: Did you see the firearm?

Alatorre: At that point in time I was focusing mainly on his head because his head was so close to mine I didn't want him to try to head butt me.

The struggle to control Rodriguez continued into the street where Alatorre and Rodriguez ended up facing one another before Alatorre wrapped his arms around Rodriguez's upper body and head. Alatorre felt Rodriguez's hands near his gun and radio and believed that Rodriguez was trying to take his firearm. He heard another deputy say, "He has a gun! He has a gun! Watch out he has a gun!" and then he pushed Rodriguez away, got about three feet from him and opened fire as Rodriguez was reaching toward his waistband. He believed he shot three to four rounds at Rodriguez who fell face down on the pavement:

Alatorre: He immediately falls to the ground. He's on his stomach now. And he's moving his hands. I'm giving him commands, "Let me see your hands! Let me see your hands!" That's when I see his left hand raising up from his waistband area and it appears he's removing an object as he's doing that, that's when I take…I believe two or three more shots to the suspect as he's on the ground.

Alatorre described Rodriguez falling face down on the ground such that Alatorre was on his right side, closer to his feet than his head. He described seeing a "black object around his waistband"

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[5] Although both Alatorre and [redacted] were represented by an attorney when they were interviewed, the interviews did not include Internal Affairs investigators and there is no indication that they were compelled.

[6] Alatorre was interviewed by Detective Ray Lugo and Sergeant Joe Ramirez of the LASD.

which he thought might have been a "shoulder strap holster" but he never saw Rodriguez with a gun. He then explained his decision to shoot a second time:

Alatorre: [W]hen I saw that, I believed that he was going to reach from that holster area which was wrapped around his waist and remove the firearm from the left side because that's where he was, appeared he was moving to, to, his right hand, towards his left hand and attempting to remove it from his waistband area.

Lugo: And, so what did you do?

Alatorre: At that point in time I gave him commands, "Let me see your hands! Place your hands out to the side!" And he, like I said, he continued to his left side and that's when I shot, I believe, two or three more times.

Ramirez: And did you see anything in his left hand at that time?

Alatorre: At that time, no I did not because I was on the side of him and after I fired he immediately stopped.

After being prompted by Detective Lugo, Alatorre described being briefed about "Indiana Dukes" gang members having a "green light" to assault law enforcement officers and described being afraid that Rodriguez was an "Indiana Duke" member who intended to kill him. Alatorre was not asked about seeing or hearing Rodriguez's gun fall, nor was he asked whether he heard a different deputy declare that he was controlling the gun.[7]

Alatorre was deposed on April 12, 2017, as part of a federal lawsuit.[8] He admitted that he never saw Rodriguez with a gun and that the "only thing that [he] observed that supported [his] belief that he had a gun was the movement of [Rodriguez's] hands to his waist." Alatorre said he shot Rodriguez when Rodriguez was "one to two steps" away from him and that Rodriguez fell as a result of being shot and landed five to eight feet away. He then described what happened next:

Gonzalez:[9] And when you saw Mr. Rodriguez on the ground face down – he was face down, correct?

Alatorre: He was on his stomach, yes, with his hands in his waistband area.

Gonzalez: Both hands?

Alatorre: Yes.

...

[7] Alatorre stated that after all the shooting was done, [redacted] was holding the subject at gunpoint "just in case he did have *another* firearm on his person." (emphasis added) Investigators did not follow up on this statement.

[8] The case of A.E.R., a Minor, et al. v. County of Los Angeles, et al., Case No. CV 16-04895 was filed in the Central District of California alleging that [redacted] and Alatorre used excessive force when they shot and killed Rodriguez. The case was settled with a $1,000,000 payment to the plaintiffs by the defendants. As noted *infra*, most of the deputies at the scene were deposed for this civil action.

[9] Jorge Gonzalez is one of the attorneys representing the plaintiffs in the federal lawsuit.

Gonzalez: And did that cause you concern?

Alatorre: Yes. Yes sir.

Gonzalez: Why?

Alatorre: I still believed at the time he still had the firearm on his person and he was still reaching. Because I recall him raising his right shoulder from the ground and I recall my partner shouting, "He's moving! He's moving!" So at that time I start giving commands for him to place his hands out to his side, remove them from his waistband area. He did not do so. Fearing for my safety, I additionally shot the second volley...His arms were underneath his body. He was raising his right portion of his shoulder...And we were still giving him commands to get his hands out to the sides, "Let us see your hands!" and he wasn't complying.

...

Gonzalez: So you indicated that you observed his right shoulder moving and at that point you thought he was trying to arm himself and you began to shoot again, correct?

Alatorre: Yes, sir.

Gonzalez: This was after you had ordered him to show his arms or show his hands, correct?

Alatorre: Yes.

Gonzalez: And so when he moved his shoulder, did you think that he was attempting to – did it cross your mind...that he was attempting to comply with your order?

Alatorre: No, sir.

Alatorre went on to describe Rodriguez's shoulder movement as "quick."

Deputy [redacted] Statement

On February 13, 2016, [redacted] started working at 10:00 p.m. and joined [redacted] who was already out on patrol. Just before 4:00 a.m. on February 14, the deputies made a traffic stop on a blue van which they believed was related to a stolen and stripped car they had observed. After the van had stopped, [redacted] approached the passenger side of the van while [redacted] approached the driver's side. [redacted] ordered Rodriguez to keep his hands on the dashboard but he did not fully comply; instead he mumbled something about his phone. She asked Rodriguez where they were headed and he replied "home," but did not respond when she asked where home was. [redacted] told her to request additional units and she did.

Rodriguez was still fidgeting with his hands despite her commands. She grabbed onto his right hand and then reached through the open window and opened the van's door from the inside because the external handle was broken. A second deputy arrived and also grabbed onto Rodriguez.[10] The deputies were pulling Rodriguez out of the van when he reached toward his

[10] [redacted] did not know which other deputies engaged with Rodriguez during the incident.

waist with his left hand; [redacted] responded by grabbing his left hand. At the same time, [redacted] shouted, "417! 417!" Rodriguez got out of the car and was facing away from [redacted] who was behind him but still holding his hands. Rodriguez broke her hold, spun away from her and the van door, and moved to the front of the van. [redacted] started saying, "He's got a gun! Shoot him! Shoot him!" because of the way he was crouching and reaching for his waistband. [redacted] and another deputy were trying to hold onto Rodriguez when [redacted] lost her grip. Once she lost hold of him, she drew her weapon. Rodriguez was facing [redacted] and another deputy when his shirt or jacket was pulled off over his head which caused the deputy with whom he was fighting to lose hold of him as well. [redacted] was about five feet from Rodriguez when she fired three to four shots at Rodriguez. She heard another deputy fire five or six shots. After the shots, Rodriguez fell to the ground:

[redacted]: ...He goes to the ground and he has his right hand underneath his body. And because there's so many deputies around I remember a moment where I reassessed because I looked back and I saw the one partner I remember seeing. Because I thought there were multiple shooters I thought that maybe my partners shot. Because I did hear other rounds...After the three or four shots that I fired I knew we were exposed, I knew that there was two [people] behind me...so I knew that there was more to this scenario, so I remember looking back...I remember seeing one partner and I remember saying, "We don't have cover!" and I said, "Watch his hands; he's moving and he's got his right hand under his body!" And there was a second, maybe two or three shots because of that.

Ramirez: Did you fire your weapon again?

...

[redacted]: No. I didn't fire anymore.

...

Lugo: And then what happened.

[redacted]: That's it. I mean, the, the suspect is down, and he has this back brace which almost looks like a holster, and because of the, because of the way the straps were it almost looked like...because there was like creases in it, I thought there was, the weapon was under him still.

[redacted] never saw a weapon and said she did not know that Rodriguez's gun had dropped on the ground outside of the van's door until later.

[redacted] was also prompted by Lugo to describe threats against law enforcement officers by "Indiana Dukes" gang members. She responded that she had been told of such a threat but that it was not one about which she was particularly concerned.

[redacted] was deposed on April 12, 2017. She testified that she never saw a gun in Rodriguez's possession and acted only in reliance on [redacted] statement. She said Rodriguez was in a "tug

of war" with Alatorre, who eventually pulled off Rodriguez's sweater and exposed a back brace which she "thought was a holster, like a gun holster."

Gonzalez: And you were not able to see a gun in that area of the waist where the back brace was; is that correct?

[redacted] I did not see a gun.

Gonzalez: And you said that he again went toward his waistband area with his hands, correct?

[redacted] Yes.

Gonzalez: What happened then?

[redacted] I had already drawn my weapon, so I immediately shot rounds.

Gonzalez: Okay. And the immediate threat that was posed to you was the fact that he had moved his hands towards his waist?

[redacted] Yes.

[redacted] then described what happened after she shot:

> He falls to the ground. And he has his right hand under his body, right at the waist level, right under his waistband. And I yell out, "Watch his hands! He's moving!" And I look back, and I'm trying to just reassess because I know there are deputies behind me. I don't know who had shot at that time, and I want to make sure that bullets aren't coming from behind me because I don't have cover. I remember saying, "We don't have cover." [And then Alatorre fired a second volley of shots.]

When asked to describe how Rodriguez moved when he was on the ground, [redacted] said, "his arm and shoulder kind of twitched up."

Physical Evidence

LASD criminalists recovered 19 shell casings from the scene. They were all in close proximity to Rodriguez's body, including one found underneath his body. Rodriguez was lying face down on the pavement with his forehead on the road surface. One "bullet strike" mark was located on the pavement immediately next to his right side and another was located on the pavement, under his body, around the area where his upper body or neck was laying. Rodriguez's body was located 45 feet and 5 inches in front of the van from which he exited. A substantial amount of blood was pooled under his left forearm, which was bent at the elbow such that his hand was near his face.

A Ruger "Single-Six" .22 caliber revolver was located on the street adjacent to the front passenger door from which Rodriguez exited. The firearm was loaded with four cartridges and had two empty chambers.

The firearms of [redacted] and Alatorre were examined. [redacted] firearm had been discharged four times. Alatorre's firearm was fully loaded when it was examined; however, an empty magazine was found to the north of Rodriguez, indicating that Alatorre fired his weapon 15 times before reloading his weapon with a new magazine.[11]

Autopsy

Dr. Ogbonna Chinwah conducted the autopsy on Rodriguez. Rodriguez suffered 17 gunshot wounds; ten to his back, two to his shoulder, one to his arm, and four to his head.

Shoulder and Arm Wounds

Rodriguez was shot in his left shoulder. The bullet entered the top of his shoulder and traveled right to left and downwards, penetrating his chest cavity and left lung. The bullet track is consistent with having been inflicted when Rodriguez was facing the shooting deputies and leaning forward at his waist. This injury alone was fatal.

Rodriguez was shot in the right shoulder by a bullet which grazed the skin but did not penetrate into his body. Because of the nature of the wound, it is impossible to determine whether the bullet hit him from the front or the back.

Rodriguez was also shot in the left arm. This bullet entered the front of his arm above his elbow, traveled front to back and exited the back of his arm damaging only muscle tissue. The location and direction of this wound is consistent with having been inflicted when Rodriguez was facing the deputies.[12]

Back Wounds

Rodriguez was shot ten times in the back. Dr. Chinwah did not trace the individual wound paths or correlate entry and exit wounds. He noted that the wounds are concentrated on Rodriguez's upper right back, but they are distributed across his back. He noted that the bullets all "traveled back to front and most of them traveled right to left, although a few traveled left to right." Their trajectories were either straight through the body, slightly upward or slightly downward. Collectively these bullets did massive damage to Rodriguez's body, penetrating the lungs, heart, liver, one kidney, and intestine, while also causing extensive fracturing to the ribs and spine. Seven of the bullets exited the front of his chest. These wounds were rapidly fatal.[13] Dr.

[11] Alatorre's weapon was capable of holding one round in the chamber and an additional 15 rounds in the magazine. If all of the loaded rounds are fired through a semiautomatic firearm the slide will lock to the rear of the weapon, alerting the shooter that the firearm is empty. Because one live round remained in the chamber of Alatorre's firearm when he reloaded, the slide on his weapon would not have locked back and there would be no outward evidence that the magazine was empty. An inference could be drawn that Alatorre counted, or otherwise recognized, the number of rounds that he fired and reloaded only when his magazine was fully emptied but before the last round in his firearm was expended.

[12] Dr. Chinwah's report states that this wound path was "back to front;" however, this assertion is belied by the autopsy photographs and Dr. Chinwah's notes and diagrams.

[13] Dr. Chinwah uses the term "rapidly fatal" to describe injuries which would cause death within seconds or several minutes. He testified in his deposition that the wounds, taken together, were rapidly fatal; he declined to opine about any individual wound.

Chinwah opined that these wounds were not sufficient to paralyze Rodriguez and he would have been capable of some volitional movement after the wounds were suffered.

Head Wounds

Rodriguez was shot four times in the right side of his head. All four bullets entered his head in a tight pattern near his right ear and traveled back to front and right to left. Three of the bullets exited his face near his right eye and nose. Although it is impossible to know, based upon the physical evidence alone, in what order the wounds were suffered, the location of the wounds and the trajectory of the bullets are consistent with the theory that these wounds were inflicted when Rodriguez was lying face down on the ground with his forehead against the pavement.

[redacted]

Dr. Chinwah was asked whether, assuming that the gunshot wounds to the head were suffered 13 seconds after all the other wounds, Rodriguez was alive at the time he was shot in the head. He replied that he would be unable to state with medical or legal certainty that Rodriguez was alive at the time he suffered the head wounds based on his examination alone.

As part of the civil litigation brought against the LASD, the plaintiffs hired David Balash, a crime scene analyst in private practice, to give his opinion about the evidence of the shooting. Balash noted that at least two of the exit wounds on Rodriguez's chest were "supported," meaning that the projectile had sufficient velocity to fully exit the body, but was prevented from doing so because something hard prevented its exit, so it remained in or near the exit wound.[14] Balash opined that at least six or seven of the gunshot wounds suffered by Rodriguez were

[14] Dr. Chinwah noted three exit wounds on Rodriguez's chest where the projectile was in, or very near, the exit wound.

inflicted when he was on the ground.[15] Balash also opined that three of the head wounds were "direct" wounds, meaning the first thing the bullet hit was Rodriguez's head, and the fourth wound was "indirect," meaning the projectile impacted the ground before ricocheting into Rodriguez. This opinion is consistent with the bullet strike mark on the pavement next to Rodriguez's body.

Toxicology testing confirmed that Rodriguez had marijuana and methamphetamine in his system when he was killed. Dr. Chinwah does not believe the drugs would have an impact on the speed at which the gunshot wounds caused Rodriguez's death.

Civilian Witness Statements

[redacted] described being pulled over by the deputies and being taken behind the van she was driving so that a female deputy could search her. She saw Rodriguez fighting with three to five deputies and trying to get away from them. She believed that the deputies were hurting Rodriguez and yelled for them to stop. She believed that Rodriguez fell to the ground and then "somebody said something, I don't know [what], and then all of them like pulled their guns out and started shooting." After the shots were fired, she kneeled on the ground and faced away. She described hearing one set of shots in quick succession.

[redacted] was in the back seat of a van being driven by his [redacted] [redacted] when they were pulled over by deputies. He heard the deputies ordering Rodriguez to stop moving and they were scuffling as if he was resisting and then, "I just heard something about a rifle, 'he's got a rifle' or something like that…and then all the screaming started."[16] [redacted] heard Rodriguez's gun fall to the ground and saw Rodriguez and the deputies struggling in the street. He described Rodriguez with a "desperate" look on his face "like he wasn't going to stop" while he was trying to get away from the deputies just before he was shot.[17] Rodriguez was almost free of the grasp of the deputies:

> And I can't say who was the first one that started shooting because, like I said, I closed my eyes then. [unintelligible] I closed my eyes and like, oh shit, you know, because I got scared. And he was still like trying to move. He was still, you know? Like I said, he didn't moan or something [unintelligible] and I closed my eyes, like, oh shit, you know, like I closed my eyes again and then, when I opened them, I opened them again, he's on the ground, you know, and they're still shooting him. So they stopped and that's when I just, I just closed my eyes and I just starting praying, you know, like [unintelligible], and I heard some more gunshots afterwards.

During his deposition, [redacted] testified that he and Rodriguez had smoked methamphetamine several hours before the traffic stop and, as a consequence, Rodriguez was unable to sit still.

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[15] Although a "supported" or "short" exit is well known among expert criminalists, Dr. Chinwah testified in his deposition that he did not attribute any significance to the location of the projectiles which were found adjacent to the exit wounds.

[16] While every deputy at the scene says [redacted] yelled "417" upon seeing the gun, [redacted] told investigators that he initially believed that Rodriguez's handgun, which had a 9-inch barrel, was a rifle.

[17] [redacted] interview was extremely difficult to understand because he talked softly and slurred his speech.

Contrary to his statement to detectives, [redacted] testified that he knew Rodriguez had a handgun which Rodriguez kept secreted in a back brace. [redacted] also testified that he saw the second volley of gunshots by Alatorre; saying Alatorre either fell or reached down to pick something off the ground, stood and walked toward Rodriguez while cursing at him, and shot Rodriguez as he lay motionless on the ground.

LEGAL ANALYSIS

In California, a conviction for murder requires that the defendant kill a person with "malice aforethought" and without lawful excuse. CALCRIM No. 520; Penal Code section 187. "Malice aforethought" means either an express intent to kill or the knowing commission of a deadly action with conscious disregard for human life. CALCRIM No. 520.

California law permits any person to use deadly force in self-defense or in the defense of others if that person actually and reasonably believes that he or others are in imminent danger of great bodily injury or death. Penal Code § 197; CALCRIM No. 505; *See also* People v. Randle (2005) 35 Cal.4th 987, 994 (overruled on another ground in People v. Chun (2009) 45 Cal.4th 1172, 1201); People v. Humphrey (1996) 13 Cal.4th 1073, 1082. In protecting himself or another, a person may use all the force which he believes reasonably necessary and which would appear to a reasonable person, in the same or similar circumstances, to be necessary to prevent the injury which appears to be imminent. CALCRIM No. 3470; *See* Plumhoff v. Rickard (2014) 134 S.Ct. 2012, 2022 (if a shooting is justified, officers need not stop shooting until the threat has ended). Actual danger is not necessary to justify the use of deadly force in self-defense; if the person's beliefs were reasonable, the danger does not need to have actually existed. CALCRIM No. 3470.

If a person actually believes that deadly force is necessary for self-defense or in defense of another, but that belief is unreasonable, the killing is partially justified and the killer may not be convicted of murder; however, he may be convicted of voluntary manslaughter. Penal Code section 192(a); CALCRIM No. 571; *See also* People v. Blakeley (2000) 23 Cal.4th 82, 99; In re Christian S. (1994) 7 Cal.4th 768; People v. Flannel (1979) 25 Cal.3d 668; People v. Barton (1995) 12 Cal.4th 186, 199.

When assessing the reasonableness of the use of deadly force, a jury must "consider all the circumstances as they were known to and appeared to the defendant and consider what a reasonable person in a similar situation with a similar knowledge would have believed." CALCRIM No. 505. "Although the belief in the need to defend must be objectively reasonable, a jury must consider what 'would appear to be necessary to a reasonable person in a similar situation and with similar knowledge.'" People v. Humphrey, *supra*, 13 Cal.4th at 1082-83. This rule allows a defendant to present evidence of his past experiences to both: 1) explain how they impacted his actual, subjective, perception of danger, and 2) to help the jury understand the objective reasonableness of that belief from the defendant's perspective. *See* People v. Sotelo-Urena (2016) 4 Cal.App.5th 732 (allowing defense evidence of a homeless person's exposure to, and fear of, violence on the streets in a murder prosecution); People v. Humphrey, *supra*, 13 Cal.4th 1073 (allowing defense evidence of domestic violence and its effects in a murder prosecution). This enables a jury who is assessing the conduct of a law enforcement officer "to

evaluate the conduct of a reasonable person functioning as a police officer in a stressful situation – but this is not the same as following a special 'reasonable police officer' standard." People v. Mehserle (2012) 206 Cal.App.4th 1125, 1146.

It is the prosecution which has the burden of proving beyond a reasonable doubt that a killing was not justified. CALCRIM Nos. 505, 507. Thus, to bring a murder charge against a defendant in the face of a claim of self-defense, the prosecution must be able to prove beyond a reasonable doubt that the killer did not actually believe that the decedent posed an imminent threat when the defendant killed him. To bring a charge of voluntary manslaughter, the prosecution must be able to prove beyond a reasonable doubt that the killer's belief in the need for self-defense, though honest, was not objectively reasonable at the time of the killing.

A. The First Volley of Shots by Alatorre and [redacted]

In this instance, the deputies who initiated the stop of the van in which Rodriguez was riding had reasonable suspicion to investigate the possibility that Rodriguez was involved in activities relating to vehicle theft. After the lawful stop, Rodriguez was never compliant with even basic commands to keep his hands visible and was actively trying to escape the grasp of Alatorre and [redacted] both while he was in the van and after he stepped out. The deputies had a legal duty to investigate the stolen car and to detain Rodriguez for that investigation. Once the deputies were alerted that Rodriguez was armed, his resistance was reasonably perceived as potentially deadly to them and those around them.

Both deputies said that they shot Rodriguez when he reached toward his waistband, and there is no evidence to refute this. Rodriguez was facing the shooting deputies when they discharged their firearms simultaneously, striking Rodriguez once in his left shoulder and once in his left arm. After those shots, but before he fell, it is likely Rodriguez spun away from the deputies and was shot multiple times in the back.[18] The statements of the deputies are consistent with the evidence, which supports the conclusion that the deputies continued to fire until the threat they reasonably believed Rodriguez posed was neutralized.

Because there is no evidence to refute the deputies' statements that they shot in response to his reaching to his waistband immediately after they had been told he possessed a firearm, the evidence supports the conclusion that Deputies Alatorre and [redacted] each actually and honestly believed that they were in imminent danger at the time they shot. This actual and honest belief precludes prosecution for murder.

As explained above, we must also assess whether the actions of the deputies were objectively reasonable. Although Rodriguez was already disarmed at the time Alatorre and [redacted] shot him, he was actively struggling with multiple deputies, refusing to comply with any of their

[18] Officers are trained to shoot rapidly at a person who presents a threat until the threat ends, usually because the person falls to the ground. One study which examined shootings by officers showed that they may initiate a trigger pull in as quickly as 0.02 seconds after the last trigger pull. The same study showed that an officer in a real world deadly force encounter would likely take 0.56 seconds to stop shooting once the perceived threat was eliminated. The authors concluded "three to four rounds could be fired by the officer as part of an automatic sequence after the signal to stop had already occurred." William J. Lewinski et al., *Police Officer Reaction Time to Start and Stop Shooting: The Influence of Decision-Making and Pattern Recognition*, 14(2) LAW ENFORCEMENT EXECUTIVE F. 1, 12 (2014)

commands, continually reaching for his waistband and not responding to them verbally. The situation quickly escalated and, because neither [redacted] nor [redacted] effectively communicated to the other deputies their observation that Rodriguez had dropped the weapon, it is not unreasonable to conclude that the shooting deputies were unaware that one of their colleagues controlled Rodriguez's firearm. Based on the totality of the circumstances and examining the situation from the deputies' perspectives, their belief in the need for deadly force, while mistaken, was objectively reasonable, and therefore lawful.

B. The Second Volley of Shots by Alatorre

Notwithstanding the lawfulness of the initial shooting, the additional shots fired by Alatorre after Rodriguez fell face down on the pavement require additional analysis. It is undisputed that only Alatorre shot after Rodriguez fell.

Alatorre stated that after Rodriguez was down he gave commands to Rodriguez to move his hands out from under his body and put them to his sides, and when Rodriguez appeared to move, Alatorre shot him again. Alatorre described thinking that a back brace worn by Rodriguez was a holster, but admitted that he did not see anything in Rodriguez's hands. He also admitted that Rodriguez's left side was away from him so that he could not see that hand. Other deputies also described what they saw at the time of the second shooting:

[redacted] described Rodriguez on the ground "still moving around" after being shot and with his right hand visible:

> Yeah, I remember Alatorre – and even [redacted] was yelling – but they were telling him. "Hey – stop moving!" you know, "Let me see your hands! Let me see your hands!" And he is still – he's not, you know, he's not sticking them out or anything so I know that's when Alatorre threw – he shot a couple more rounds. I'd say maybe two – between two to three rounds after.

When [redacted] was deposed on March 7, 2017, he said that after Rodriguez was on the ground he was given orders to show his hands and he "could not see his hands still; but he was still trying to reach for something underneath his waistband, torso area" when Alatorre shot again.

[redacted] described Rodriguez on the ground after Alatorre and [redacted] fired shots at him:[19]

> I'm there, I'm detaining the suspect at gunpoint and then I see – I hear Deputy [redacted] say he's moving. I see his left arm move and Deputy Alatorre fires about a couple of rounds.

When [redacted] was deposed on March 6, 2017, he described Rodriguez "on the floor face down, arms between him and the ground; and I just saw his elbow move – or his arm and his elbow move out towards kind of away from his body" before Alatorre shot him again.

[redacted] described Rodriguez falling face down on the ground after being shot:

[19] Deputies [redacted] and Jesus Mariscal were the last LASD unit to arrive prior to the shooting, but after [redacted] announced that Rodriguez had a gun. [redacted] attempted to assist in detaining Rodriguez, and Mariscal stood next to the passenger side of the van to detain [redacted]

I can't see his – only his back, his legs, his face was away from – facing away from us. Didn't even see his face, just the back of his head and I don't see any of his hands…both his arms are underneath him [and] he's still moving…like his whole, you know, he's like…squirming around. [Deputies are saying] "Show me your hands! Show me your hands!" [He] doesn't show his hands and he's still wiggling around for lack of a better term…and I'd say it's a good 10, 15 seconds of giving him orders and not, not showing his hands at all…and Deputy Alatorre shoots a succession of maybe three shots… He's not moving now.

[redacted] was deposed on March 3, 2017, and said Rodriguez fell to the ground after the first volley of shots and "he was moving around side to side" when Alatorre shot him again.

[redacted] said that he could not see Rodriguez's hands after he fell to the ground and, after being directly asked, remembered that "one or two" shots were fired after he was on the ground. When he was deposed on March 2, 2017, [redacted] repeated his initial statement and added Rodriguez's "shoulders were moving, like, side to side" when he was shot a second time.[20]

[redacted] and Mariscal said they only heard shots but kept their focus on [redacted] the entire time. Huerta said she heard two sets of shots but could not see the shooter or Rodriguez because she was focused on [redacted]

[redacted] believed that Rodriguez was on the ground when he was first shot and then heard a second series of shots a short time later. While his perception of two volleys of shots is correct, his assertion that Rodriguez was already on the ground when he was first shot is belied by the physical evidence and his statement as a whole is undermined by his constant assertion that he closed his eyes during the altercation between Rodriguez and deputies. The fact that his deposition testimony is markedly different from the statement he made in his initial interview further undermines his credibility.

As explained above, to prosecute Alatorre for murder, the People need to prove beyond a reasonable doubt that Alatorre did not actually believe that he needed to use deadly force in self-defense when he shot and killed Rodriguez. Having concluded that Alatorre fired the first volley of shots under the actual and reasonable, albeit mistaken, belief that Rodriguez presented a deadly threat, we find there is no evidence to suggest Alatorre's actual belief in the need to use force in self-defense was contrived ten to fifteen seconds later when he fired the second volley. Alatorre believed Rodriguez was still armed and he, and every other deputy who was in a position to see, described Rodriguez moving while lying on the ground with at least one of his hands obscured from view. Because Alatorre actually believed Rodriguez was both armed and presented a deadly threat, the charge of murder cannot be proven.

To prosecute Alatorre for voluntary manslaughter, the People need to convince a fact finder beyond a reasonable doubt that Alatorre's actual belief in the need for self-defense was not objectively reasonable when he shot and killed Rodriguez after Rodriguez had fallen to the ground. We must assess Alatorre's conduct as a reasonable person acting under the facts and circumstances known to him at the time.[21] Further, because we have determined that the first

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[20] [redacted] testified at his deposition that he was going to shoot Rodriguez because he heard [redacted] say "he's got a gun" but did not because he "didn't have a clear shot," while admitting that he never saw Rodriguez in possession of a gun.

[21] Alatorre's personnel records were reviewed pursuant to Penal Code section 832.7.

volley of shots was lawful, we must also show that the second volley of shots caused the death of Rodriguez. A close examination of the facts, including the lack of any video or audio recording, made in conjunction with an analysis of the most likely defenses which will be presented at trial, leads us to the conclusion that the charge of voluntary manslaughter cannot be proven beyond a reasonable doubt.

When Alatorre fired this second volley, he was presented with the following circumstances: Alatorre reasonably believed that Rodriguez was still armed after he had just been shot and was lying face down with his forehead resting on the pavement. There were seven other deputies and one sergeant at the scene. Rodriguez had been on the ground for "between 10 and 15 seconds" and was "not showing his hands" and was "wiggling" on the ground while deputies shouted commands to show them his hands; and, although there was no indication that Rodriguez was making any attempt to flee or continue his fight with the deputies, he did not show his hands. Alatorre then shot Rodriguez between five and seven times when he either "observed his right shoulder moving" or saw his "left hand raising up," as Alatorre was commanding him to show his hands.

Alatorre's statements about Rodriguez's movement between the first and second volleys have not been fully consistent. He told detectives that he saw Rodriguez's "left hand raising up from his waistband area and it appears he's removing an object" and that Rodriguez "was moving to, to, his right hand, towards his left hand and attempting to remove [a firearm] from his waistband area." These statements are inconsistent with Alatorre's deposition testimony that he reacted to the movement of Rodriguez's right shoulder. The significant movement of Rodriguez's left arm after he fell, as initially described by Alatorre, is also inconsistent with the pool of blood on the street under that arm. However, although he provided two formal statements, Alatorre was never asked to address these apparent inconsistencies.

The witness deputies also provided two formal statements about the second volley of shots. Although they were not asked to give detailed descriptions of what Rodriguez was doing between the first and second volleys, each witness who was in a position to see Rodriguez after the first volley of shots agreed that his hands were at least partially obscured and that he was moving while lying on the ground. Alatorre told investigators that he was in fear for his life because of that movement. However, there were at least three other deputies who were within steps of Alatorre when Alatorre shot Rodriguez on the ground, and none of them opened fire in response to any movement by Rodriguez. Although the fact that the other deputies did not shoot could imply Alatorre was acting unreasonably, we must assess the totality of the evidence to determine whether there is sufficient evidence to prove beyond a reasonable doubt that his use of force was unreasonable.

Without any recordings or other objective evidence of the incident, we must recreate the ten to 15 second period of time between the two volleys of shots by relying wholly on the statements of witnesses. Those witnesses all agree that Rodriguez was moving with his hands either wholly or partially underneath his body in the moments before Alatorre fired the second volley of shots. The witness statements also provide evidence which suggests a reasonable person at the scene could actually believe that Rodriguez was still armed, and could not have known the extent of Rodriguez's injuries after the first volley of shots.[22] When taken together, the statements of

[22] Indeed, the fact that deputies approached Rodriguez with a ballistic shield after the second volley suggests they did not know the extent of Rodriguez's injuries after the second volley of shots.

witnesses are insufficient to prove beyond a reasonable doubt that the second volley of shots was unreasonable.

Finally, the physical evidence at the scene is consistent with the statements of all the witnesses, and the autopsy, while incomplete, is similarly consistent. Therefore, even if the witness statements cause us to question the reasonableness of Alatorre's use of force, the forensic evidence cannot provide sufficient objective evidence to prove that the force was unreasonable beyond a reasonable doubt. Having closely examined all the evidence, it is our assessment that the charge of voluntary manslaughter cannot be proven beyond a reasonable doubt.

Moreover, there is insufficient evidence to prove beyond a reasonable doubt that the shots from the second volley were the cause of Rodriguez's death. Dr. Chinwah only analyzed the trajectory and wound track of the gunshot wound to Rodriguez's shoulder and explained that it must have occurred when Rodriguez was facing the shooters and bent at the waist. Dr. Chinwah explicitly opined that this wound was independently fatal. The coroner's failure to analyze the trajectory of the other bullet paths or to recognize the significance of supported exit wounds makes it impossible to determine how many times Rodriguez was struck in the initial volley, or the severity of those wounds.[24] Because Dr. Chinwah opined that a gunshot wound which was clearly inflicted in the first volley of shots was fatal and it is impossible to know what other wounds to the torso were inflicted in the first volley, it is not possible to prove that the wounds inflicted by Alatorre in the second volley of shots were an independent cause of death.

CONCLUSION

Based upon all the available evidence, and having considered the likely defenses and the presentation of the evidence before a jury, we find that Deputies [redacted] and Andrew Alatorre acted lawfully in defense of others and in self-defense when they initially used deadly force against Eduardo Rodriguez. We further find that there is insufficient evidence to prove beyond a reasonable doubt that Deputy Alatorre used unreasonable force when he shot Eduardo Rodriguez after Rodriguez fell to the ground. We are closing our file and will take no further action in this matter.

[24] A complete determination of wound paths requires an examination of a body both before and after it is explored during the autopsy. Because the location of damaged organs changes when the body is opened, it would be nearly impossible to accurately assess which shots caused specific injuries by relying only on photographs and notes.